

**Fair Political Practices Commission**  
**MEMORANDUM**

To: Chairman Johnson and Commissioners Hodson, Huguenin, Leidigh, and Remy

From: John W. Wallace, Assistant General Counsel  
Scott Hallabrin, General Counsel

Subject: Adoption Discussion of Regulation 18946.6: Reporting and Valuation of Gifts: Air Transportation

Date: May 15, 2008

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Proposed Commission Action and Staff Recommendation: Adopt proposed Regulation 18946.6.

Reason for Proposal: The Political Reform Act (the “Act”) places certain restrictions on the receipt of gifts by public officials. The Act prohibits candidates and officials from receiving gifts of more than \$390 in a calendar year from any reportable source. A \$10 per month limit applies to gifts made to state officials by a lobbyist or lobbying firm. In addition, the Act prohibits a public official from making, participating in making, or using his or her official position to influence a decision involving the donor of a gift valued at \$390 or more in a 12-month period where the decision will have a foreseeable and material financial effect on the donor. (Section 87103.) Finally, gifts of \$50 or more are reportable on the official’s Statement of Economic Interest (SEI).

In order to implement these requirements, the Commission has adopted a series of rules concerning valuation of gifts. However, there is no rule specific to the valuation of free air transportation. Currently, the Commission advice is consistent with the Commission Opinion *In re Stone* (1977) 3 FPPC Ops. 58. *In re Stone*, which dealt with gifts to an agency, provides:

“We recognize that in the instant case, it may be difficult to estimate the value of the intangible services received. Accordingly, the filer may utilize the commercial air rate or the charter rate divided by the number of passengers as guideposts in estimating the value of the flight.”

However, the application of the rule in *In re Stone* can result in the disclosure of a value for gifts of air transportation that may have no relationship to the actual cost of the air transportation received. For example, under the current rule an official could take a flight on a luxurious Gulfstream IV and value it on his or her Statement of Economic Interests at the least expensive commercial supersaver rate offered for the trip.

Summary of Proposed Actions: At the April Commission Meeting, the Commission supported noticing proposed Regulation 18946.6. However, the Commission asked for some refinements before the adoption hearing.

Proposed Regulation 18946.6 continues to provide two methods for valuing gifts of air transportation:

(1) On a commercial aircraft the value is the actual cost of the ticket.

(2) On a noncommercial aircraft the value is determined by taking the fair market value of the normal and usual charter fare or rental charge for a comparable plane of comparable size and pro rating the figure (discussed further below).

### ***Type of Aircraft***

Since the prenotice hearing in April, staff has added language to the second sentence in subdivision (a) in an effort to create a brighter line between the two alternate valuation methods:

***Changes from Prenotice Version:*** “For purposes of this regulation, ‘commercial aircraft’ means an aircraft used ~~operated by a person who offers air transportation~~ to transport the general public for compensation or hire on a regular basis, and for which a fare is charged ~~charges a fare~~ on a per-passenger basis.”

### ***Pro Rated Value***

At the April Commission meeting, the question was also raised as to whether the method used to value noncommercial flights was adequate. The proposed regulation provides a two-step valuation method:

(1) First, determine the value of the normal and usual charter fare or rental charge for a comparable airplane of comparable size, and then

(2) Divide that value by the number of “designated employees,” officials listed in Section 87200, Members of Congress, and officers and employees of the executive, legislative, or judicial branch of the United States government on the plane.

As we discussed previously, under the prior rule from *In re Stone*, valuation was determined by dividing the cost among *all* the passengers. The proposed regulation would modify this rule to avoid situations where a corporation could transport a single public official on the corporation’s private charter jet to a conference, along with nine lobbyists and other employees of the corporation. Under the old formula, the value of the flight could be divided among all the passengers.

The specific concern raised at the April meeting was that the new rule would simply result in lobbyist employers inviting sufficient public officials on a flight to keep the pro rated value of the gift to each official below the gift limit. Although it is possible that the proposed standard can be manipulated, staff still believes that the change is an improvement. Under the *Stone* rule, the donor could ‘dilute’ the gift value by expanding the pool of passengers *by including other individuals attempting to influence the official*.

Thus, staff believes the proposed valuation method (with some tightening of the language since the April meeting) is preferable over the current rule. The proposed standard more accurately reflects the amount that a person who may be trying to influence a particular official is spending on that official. Furthermore, it provides a rough gauge of the intensity of the possible attempts to influence the official by increasing the gift amount in proportion to the number of nonpublic officials on the flight. Therefore, staff recommends the valuation for charter flights as proposed in the April meeting.

Appendix 1: Proposed Regulation

Appendix 2: Draft Showing Changes from the Prenotice Version

Appendix 3: Definitions of Commercial Aircraft